Senate Economics References Committee Inquiry into Corporate Tax Avoidance 4 July 2017

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Topics

- Corporate tax avoidance recapitulation
- Legislative, administrative, international action
- Impact
- Behavioural change
- Downsides

Recapitulation: Corporate tax avoidance in Australia Foreign and resident companies

- Foreign corporates:
  - No imputation incentive to pay Australian corporate tax
  - Not such a need for large operations in Australia (depending on sector)
  - Leading to potential transfer pricing, business tax threshold, interest deduction, enforcement issues
- Resident corporates with mainly local operations/customers
  - BEPS not such an issue (imputation, profit stripping more difficult) except perhaps closely held businesses
- Resident corporates with significant foreign operations/customers
  - BEPS more of an issue but double-edged
    - May have greater opportunities for Australian base stripping which could be countered by BEPS but imputation moderates
    - May be exposed to greater foreign tax (and less Australian tax as a result) for good and bad BEPS reasons

Legislative, international, administrative changes

- Changes to date
  - Legislative
    - Thin capitalisation, MAAL, DPT, BEPS transfer pricing
    - Significant global entity penalties
    - Transparency: rulings, country-by-country reporting, Australian tax payments, voluntary initiatives
  - International
    - Australia-Germany BEPSed treaty
    - BEPS multilateral treaty signed 7 June 2017 68 jurisdictions in effect 2019?
    - Inclusive framework 100 countries, BEPS peer reviews
  - Administrative
    - Enormous resources, much audit activity, little guidance or evidence of results, little willingness to provide certainty
- To come, but how much is happening: Hybrids, aggressive tax planning

Impact: Much heat, little light

- Behind-the scenes activity, some media interest
- Little public information, no public evidence from government
  - Treasurer's budget media release: "In this financial year the ATO has already raised $2.9 billion in tax liabilities from seven large multinational companies, and the ATO expects more than $4 billion in total liabilities this financial year from large public groups and multinationals"
- Some other indications
  - Rio Tinto media release 5 April 2017 has some numbers
  - Chevron case: ATO winning on interest rate, losing on currency
  - Tech companies (slightly increased?) tax payments
    - Conversation 2 May 2017, Australian 20 May 2017

Behavioural change

- Government information raises more questions than it answers
  - How much primary tax, interest, penalties, period covered etc
  - How much finally paid, how much contested?
- Initial response to MAAL by (some) companies to restructure without producing more tax liability? ATO TAs 2016/2, /8, /11
- Thin capitalisation/finance tax planning
  - TAs 2016/1, /3, /9, /10, PCG 2017/D4 (Chevron response)
  - Law changes leading to greater reliance on thin capitalisation arm's length debt test which is much more doubtful
- Transfer pricing
  - PCG 2017/1 (Offshore hubs)
  - Rio contesting assessments, using treaty dispute settlement
- It's not only taxpayers to be concerned about: BEPS multilateral treaty has met with very mixed response (including to some degree from Australia)

Downsides

- Tax certainty a problem being tackled by G20/OECD but ATO seems to be going in opposite direction
  - Switching from binding advice to non-binding guidance based on what it likes not the law, apparently unwilling to give private binding advice (APAs)
- DPT deliberately creates double taxation which will cause problems with treaty partners, threaten BEPS consensus
- Neglect of much other necessary and promised tax legislation
- Mixed messages
  - Very hard for foreign investors/workers to tell whether Australia really wants them or not
    - Tax is important part of story eg foreign investors often worse off tax wise just after thin capitalisation changes even if government gets its way with corporate tax rate cut
    - 10%x60 + 25%x40 (16) > 10%x75 + 30%x25 (15)
    - But tax not only part of story